

AUTHORITY & JURISDICTION

MPOA 1-99

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MAJ PRUGH

AUTHORITY

THE RIGHT TO:

--EXERCISE POWER

--IMPLEMENT AND ENFORCE LAW

--EXACT OBEDIENCE

Black's Law Dictionary

JURISDICTION

AUTHORITY BY WHICH COURTS:

- TAKE COGNIZANCE OF AND DECIDE CASES**
- HEAR AND DETERMINE A JUDICIAL PROCEEDING**
- ADJUDICATE CONCERNING SUBJECT MATTER IN A GIVEN CASE.**

Black's Law Dictionary

AUTHORITY

AND

=

POWER

JURISDICTION

SOURCES OF POWER

--U.S. CONSTITUTION

--ACTS OF CONGRESS

--EXECUTIVE ORDER

--SERVICE REGS

--LOCAL REGS/SOP'S

--CUSTOM

CONSTITUTION

CONGRESS HAS THE POWER TO

**“MAKE RULES FOR THE GOVERNMENT AND
REGULATION OF THE LAND AND NAVAL
FORCES”**

ART I. SEC 8, PARA 14

CONSTITUTION

**“THE PRESIDENT SHALL BE THE COMMANDER
IN CHIEF OF THE ARMY AND NAVY OF THE UNITED
STATES, AND OF THE MILITIA OF THE SEVERAL
STATES, WHEN CALLED INTO THE ACTUAL
SERVICE OF THE UNITED STATES . . . “**

ART II, SEC 2, PARA 1

ACTS OF CONGRESS

--TITLE 10 UNITED STATES CODE (USC)

--UCMJ

--TITLE 18 USC

--FEDERAL CRIMINAL LAW

--OTHERS

--APPROPRIATIONS ACTS

EXECUTIVE ORDERS

--MANUAL FOR COURTS MARTIAL

**--EO 12333 = REGULATING MILITARY INVOLVEMENT
IN CERTAIN ASPECTS OF "COVERT"
OPERATIONS--OVERSEAS AND IN COM**

--OTHERS

CONFLICTING AUTHORITIES **PROBLEM**

**--MORE RIGHTS GIVEN CITIZENS IN LAW/REG/POL
THAN GUARANTEED BY CONSTITUTION OR
STATUTE?**

**--DIRECT CONFLICT BETWEEN HIGHER AND LOWE
LEGAL AUTHORITY?**

--DOUBLE JEOPARDY?

JURISDICTION

--OVER THE OFFENSE

--OVER THE PERSON

PERSONS SUBJECT TO UCMJ **JURISDICTION**

- REGULAR COMPONENT MEMBER**
- CADETS OF SERVICE ACADEMIES**
- RESERVISTS/NATIONAL GUARD (TITLE 10 STATUS)**
- RETIRED REGULAR**
- RETIRED RESERVE HOSPITALIZED**
- PRISONERS**
- PRISONERS OF WAR**
- CIVILIANS ACCOMPANYING FORCE IN DECLARED WAR**

SCOPE OF UCMJ **JURISDICTION**

UCMJ IS EXTRATERRITORIAL. IT APPLIES TO THOSE COVERED:

--WHEREVER THEY GO

--WHENEVER THEY GO THERE.

**NOTE: FEW CIVILIAN LAWS ARE EXTRA-TERRITORIAL
SIMPLE ASSAULT IS NOT.**

REQUIREMENTS FOR UCMJ **JURISDICTION OVER PERSONS**

- 1. SUBMIT VOLUNTARILY TO MILITARY AUTH**
- 2. MET MENTAL AND AGE QUALIFICATIONS AT ENTRY**
- 3. RECEIVED MILITARY PAY OR ALLOWANCES**
- 4. PERFORMED MILITARY DUTIES.**

ART 2, UCMJ

SERVICE CONNECTION TEST = DEAD

TERMINATION OF UCMJ **JURISDICTION**

--2400 HOURS ON ETS DATE

OR --WHEN DD 214 RECEIVED

**NOTE: SERVICEMEMBERS CAN BE HELD
BEYOND ETS FOR COURTS MARTIAL, ETC.**

**--APPREHENSION WITH A VIEW TOWARD
COURTS MARTIAL IS ENOUGH TO HOLD
PAST ETS.**

CIVILIAN UCMJ **JURISDICTION**

--ONLY FOR:

**--PERSONS ACCOMPANYING AN ARMED
FORCE IN THE FIELD**

--DURING A DECLARED WAR

--CIV K'ORS IN DESERT SHIELD/STORM?

POWER TO SEIZE PERSONS

--APPREHENSION: TAKING OF A PERSON INTO CUSTODY.

--EQUIVALENT TO CIVILIAN ARREST

--REQUIRES PROBABLE CAUSE

--DETENTION: RELATIVELY SHORT PERIOD OF CUSTODY

--PAT DOWN ONLY (NO “SEARCH INCIDENT”)

--BASED ON REASONABLE SUSPICION

ART 7, UCMJ

“COMMISSIONED OFFICER, WARRANT OFFICERS, PETTY OFFICERS, AND NONCOMMISSIONED OFFICERS HAVE AUTHORITY TO QUELL QUARRELS, FRAYS, AND DISORDERS AMONG PERSONS SUBJECT TO THIS CHAPTER AND TO APPREHEND PERSONS SUBJECT TO THIS CHAPTER WHO TAKE PART THEREIN.”

“ANY PERSON AUTHORIZED UNDER REGULATIONS GOVERNING THE ARMED FORCES TO APPREHEND PERSONS SUBJECT TO [THE UCMJ] MAY DO SO UPON REASONABLE BELIEF THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE PERSON APPREHENDED COMMITTED IT.”

RULE FOR COURTS MARTIAL

302 (B) (1)

--STATES THAT, IN ADDITION TO THOSE SPECIFIED IN ART 7 (OFF, WO, NCO, & PO) THE FOLLOWING MAY ALSO APPREHEND:

--MILITARY LAW ENFORCEMENT

--WHEN MAKING APPREHENSION IN THE EXECUTION OF LAW ENFORCEMENT DUTIES.

APPREHENDING SUPERIORS

**--NCO/PO NOT PERFORMING LAW ENFORCEMENT
DUTIES SHOULD NOT APPREHEND COMMISSIONED
OFFICER UNLESS EITHER:**

--DIRECTED BY COMMISSIONED OFFICER

**OR --TO PREVENT DISGRACE TO THE SERVICE
OR THE ESCAPE OF A SERIOUS OFFENDER.**

APPREHENDING SUPERIORS

CONT'D

REPORTING:

ENLISTED APPREHENDING OFFICERS SHOULD

MAKE AN IMMEDIATE REPORT TO THE

APPREHENDING EM'S OFFICER SUPERVISOR

RULE FOR COURTS MARTIAL 302 (H) (1)

REGULATIONS & AUTHORITY **TO APPREHEND**

AR 190-30 = MPI

AR 195-2 = CID

**AR 190-22 = OFF/WO/NCO/PO/MP IN EXECUTION
OF DUTIES**

AR 190-56 = RENT-A-COPS

CIVILIAN APPREHENSIONS **ON POST**

**“WHEN A MILITARY POLICEMAN, ACTING AS THE
AGENT OF THE INSTALLATION COMMANDER,
RESTRAINS OR APPREHENDS A CIVILIAN FOR AN
ON-POST OFFENSE, THE MILITARY POLICEMAN IS
ACTING IN AN OFFICIAL CAPACITY.”**

TJAG OPINION, 1979

CIVILIAN **APPREHENSIONS** **ON POST**

REGULATIONS:

AR 190-30 = MPI CAN DETAIN

**AR 195-2 = CID CAN APPREHEND BASED ON
PROBABLE CAUSE. RELEASE TO CIV AU**

AR 190-22 = NO LIMITATIONS ON AUTHORITY

**AR 190-56 = LOOK TO CONTRACT FOR “RENTAL
COPS”**

CIVILIAN APPREHENSIONS **OFF POST**

**AR 190-30 = MPI CAN APPREHEND OFF-POST “SO
LONG AS THERE IS A ‘DIRECT’ MILITARY
INTEREST.”**

AR 195-2 = CID CAN TOO.

CIVILIAN SEARCHES **OFF POST**

**AR 195-1 = CID CAN OBTAIN SEARCH WARRANT
FOR OFF-POST SEARCH FOR EVIDENCE
OF MILITARY CRIMES.**

BUT COORD WITH SJA & US ATTY REQUIRED

**MUST BE ACCOMPANIED BY AGENT WITH
STATUTORY ARREST AUTHORITY.**

**AR 190-22 = OFF-POST SEARCHES NORMALLY BY
AUTHORITY W/ CIV WARRANT**

CITIZEN'S ARREST

--MILITARY PERSONS MAY MAKE

--AUTHORIZED AND LIMITED BY STATE LAW

--NORMALLY LIMITED TO "FELONY" CRIMES

TERRITORIAL (AREA) **JURISDICTION**

- EXCLUSIVE FEDERAL** = ONLY FED LAW APPLIES
- PROPRIETARY** = ONLY STATE LAW APPLIES.
- CONCURRENT** = BOTH CAN BE APPLIED.

ASSIMILATIVE CRIMES ACT

STATE LAW CAN BE ASSIMILATED (USED FOR PROSECUTIONS) BY THE FEDERAL GOVERNMENT IN AREAS OF EXCLUSIVE FEDERAL JURISDICTION.

18 U.S.C. 13

FED CRIMES W/ NATIONWIDE APPLICABILITY

**EXAMPLE: KILLING/KIDNAPPING PRESIDENT
OR V.P.**

**NOT = ORDINARY ARSON, ASSLT, ROBBERY,
MURDER, ETC.**

BAR LETTERS

“WHOEVER, WITHIN THE JURISDICTION OF THE U.S. . . . GOES UPON ANY [INSTALLATION], FOR ANY PURPOSE PROHIBITED BY LAW OR REGULATION; OR WHOEVER REENTERS OR IS FOUND WITHIN [THE INSTALLATION] AFTER HAVING BEEN REMOVED THEREFROM OR ORDERED NOT TO REENTER BY AN OFFICER OR PERSON IN COMMAND . . . [MAY] BE FINED . . . IMPRISONED . . . OR BOTH.”

18 U.S.C. 1382

U.S. V. ALBERTINI

--1972 = A ENTERS AFB W/ FRIENDS. POURS ANIMAL BLOOD ON CLASSIFIED DOCUMENTS; IS BARRICADED FROM BASE.

--1981 = A REENTERS AFB DURING "OPEN HOUSE" WITH FRIENDS TO DEMONSTRATE NUCLEAR ARMS.

--A ARGUES:

--BAR LETTER CAN'T LAST FOREVER.

--1ST AMEND

--ENTERED BY INVITATION

POSSE COMITATUS ACT

**WHOEVER, EXCEPT IN CASES AND UNDER
CIRCUMSTANCES EXPRESSLY AUTHORIZED
BY THE
CONSTITUTION OR ACT OF CONGRESS,
WILLFULLY
USES ANY PART OF THE ARMY OR AIRFORCE
AS A
POSSE COMITATUS OR OTHERWISE TO
EXECUTE
THE LAWS SHALL BE FINED OR
IMPRISONED NOT
MORE THAN TWO YEARS, OR BOTH**

18 U.S.C. 1385

RESULT OF

POSSE COMITATUS ACT VIOLATION

- **CRIMINAL SANCTIONS**
- **EXCLUDED EVIDENCE**
- **NO TRIAL FOR OFFENSES
REQUIRING
LAWFUL POLICE CONDUCT**
- **POSSIBLE CIVIL DAMAGES**

NONSTATUTORY EXCEPTIONS TO POSSE COMITATUS ACT

- **PROTECTION OF FEDERAL PROPERTY**
- **EMERGENCIES INVOLVING IMMINENT
DANGER
TO LIFE AND PROPERTY**
- **MARTIAL RULE / LAW**

FEDERAL AID FOR STATE GOVERNMENTS

**WHENEVER THERE IS AN INSURRECTION IN ANY
STATE
AGAINST ITS GOVERNMENT, THE PRESIDENT MAY,
UPON THE
REQUEST OF ITS LEGISLATURE OR OF ITS GOVERNOR IF
THE
LEGISLATURE CANNOT BE CONVENED, CALL INTO
FEDERAL
SERVICE SUCH OF THE MILITIA OF THE OTHER STATES,
IN THE NUMBER REQUESTED BY THAT STATE, AND USE
SUCH
OF THE ARMED FORCES, AS HE CONSIDERS NECESSARY
TO
SUPPRESS THE INSURRECTION**

10 USC 331

USE OF MILITIA AND ARMED FORCES TO ENFORCE FEDERAL AUTHORITY

**WHENEVER THE PRESIDENT CONSIDERS THAT
UNLAWFUL
OBSTRUCTIONS, COMBINATIONS, OR ASSEMBLAGES,
OR
REBELLION AGAINST THE AUTHORITY OF THE UNITED
STATES
IN ANY STATE OR TERRITORY BY THE ORDINARY
COURSE OF
JUDICIAL PROCEEDINGS, HE MAY CALL INTO FEDERAL
SERVICE
SUCH OF THE MILITIA OF ANY STATE, AND USE SUCH
OF THE
ARMED FORCES, AS HE CONSIDERS NECESSARY TO
ENFORCE
THOSE LAWS OR TO SUPPRESS THE REBELLION**

10 USC 332

INTERFERENCE WITH STATE AND FEDERAL LAW

THE PRESIDENT, BY USING THE MILITIA OR ARMED FORCES OR BOTH, OR BY ANY OTHER MEANS, SHALL TAKE SUCH MEASURES AS HE CONSIDERS NECESSARY TO SUPPRESS, IN A STATE, ANY INSURRECTION, DOMESTIC VIOLENCE, UNLAWFUL COMBINATION, OR CONSPIRACY, IF IT.

(1) SO HINDERS THE EXECUTION OF THE LAWS OF THAT STATE, AND OF THE UNITED STATES WITHIN THE STATE, THAT ANY PART OR CLASS OF ITS PEOPLE IS DEPRIVED OF A RIGHT, PRIVILEGE, IMMUNITY, OR PROTECTION NAMED IN THE CONSTITUTION AND SECURED BY LAW, AND THE CONSTITUTED AUTHORITIES OF THAT STATE ARE UNABLE, FAIL OR REFUSE TO PROTECT THAT RIGHT, PRIVILEGE, OR IMMUNITY, OR GIVE THAT PROTECTION; OR

PROCLAMATION TO DISPERSE

**WHENEVER THE PRESIDENT CONSIDERS IT
NECESSARY**

**TO USE THE MILITIA OR THE ARMED FORCES UNDER
THIS**

**CHAPTER, HE SHALL, BY PROCLAMATION, IMMEDIATELY
ORDER**

**THE INSURGENTS TO DISPERSE AND RETIRE PEACEABLY
TO**

THEIR ABODES WITHIN A LIMITED TIME

10 USC 334

MILITARY SUPPORT TO LAW ENFORCEMENT

10 U.S.C. 371-381

- **INFORMATION - 10 USC 371**
 - **CAN SHARE “ON POST” INFO REGARDING CIVILIANS WITH OFF POST CIVILIAN POLICE**
- **EQUIPMENT - 10 USC 372**
- **TRAIN TO OPERATE - 10 USC 373**
- **MAINTAIN EQUIPMENT - 10 USC 374**

MILITARY SUPPORT TO LAW ENFORCEMENT

- OPERATE EQUIPMENT - 10
USC 374**
- DETECTION, MONITORING,
COMMUNICATION:
AIR/SEA TRAFFIC**
- AERIAL RECONNAISSANCE**
- INTERCEPTION OUTSIDE US**
- PURSUIT**

WASHINGTON

December 20, 1989

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Panama

In the course of carrying out the military operation in Panama

which I have directed, I hereby direct and authorize the units

and members of the Armed Forces of the United States to apprehend

General Manuel Noriega and any others persons in Panama currently

under indictment in the United States for drug-related offenses.

I further direct that any persons apprehended pursuant to this

directive are to be turned over to civil law enforcement

George Bush

officials of the United States as soon as practicable.

MILITARY SUPPORT TO LAW ENFORCEMENT

- **LIMITATIONS**
- **NO DIRECT PARTICIPATION IN
SEARCH/SEIZURE/ARREST**
- **NO TARGETING CIVILIANS OFF POST BY
MILITARY INVESTIGATORS**
- **NO ADVERSE EFFECT ON PREPAREDNESS**
- **REIMBURSEMENT**

OTHER PERMISSIBLE USES OF FEDERAL TROOPS

- **DISASTER RELIEF**
- **MILITARY ASSISTANCE TO SAFETY AND
TRAFFIC
PROGRAM [MAST]**
- **NATIONAL SEARCH AND RESCUE PLAN [SAR]**
- **EXPLOSIVE ORDNANCE DISPOSAL [EOD]**
- **LOANS OF MILITARY EQUIPMENT**

MARTIAL LAW

**MARTIAL LAW IS AN ARBITRARY SYSTEM OF
LAW,**

**WHICH IS ESTABLISHED BY A MILITARY
COMMANDER**

**AND WHICH SUPPLANTS EXISTING CIVIL LAW
AND**

**AUTHORITY. IT IS ESTABLISHED ONLY WHEN
THE**

**CIVIL AUTHORITIES CANNOT OR WILL NOT
FUNCTION**

**IN THEIR RESPECTIVE CAPACITIES - NECESSITY
IS**

ITS LEGAL JUSTIFICATION

MARTIAL LAW

**IN THE UNITED STATES, MARTIAL LAW IS
THE**

**TEMPORARY GOVERNMENT OF THE CIVIL
POPULATION**

**OF DOMESTIC TERRITORY
THROUGH THE**

**MILITARY FORCES, WITHOUT THE
AUTHORITY**

PARA. 12, FM-27-10

**OF WRITTEN LAW, AS NECESSITY MAY
REQUIRE**

MILITARY OFFENSES

--STATUS MATTERS:

--OFFICERS (ARTS 89 & 90)

--WARRANT OFFICERS (ART 91)

--NCO'S/PETTY OFFICERS (ART 91)

--OTHER "AUTHORITY GIVERS"

--LAWFUL ORDERS (ART 92)

**--LAW ENFORCEMENT PERSONS
18 USC 1114**

RESPECT

OFFICERS: ART 89

**--A DID OR OMITTED ACTS OR USED CERTAIN
LANGUAGE TO OR CONCERNING A COMM OF**

--BEHAVIOR/LANG DIRECTED TWD COMM OF

--COMM OFF WAS SUPERIOR OF A'S

--BEHAVIOR/LANG WAS DISRESPECTFUL

SUPERIOR

- A & V IN SAME ARMED FORCE: V IS SUPERIOR
COMMISSIONED OFFICER OF A WHEN EITHER
SUPERIOR IN RANK OR COMMAND

BUT SUPERIOR IN RANK IS NOT ENOUGH IF
V IS NOT SUPERIOR IN COMMAND.**
- A & V IN DIFFERENT ARMED FORCE: V IS SUPER
ONLY IF IN A'S CHAIN OF COMMAND.**

RESPECT

WARRANT OFFICERS/NCO'S/PETTY OFF: ART 91

--A IS A WARRANT OFFICER OR ENLISTED MEMBER

--A DID OR OMMITTED CERTAIN ACTS/LANG

**--BEHAVIOR/LANG USED TWDAND WITHIN SIGHT
OR HEARING OF WO, NCO, PO**

--A KNEW V WAS WO, NCO, PO

--V WAS IN EXECUTION OF OFFICE

--BEH/LANG WAS DISRESPECTFUL/CONTEMPTUOUS

AGGRAVATED: V = SUPERIOR & A KNEW IT.

EXECUTION OF OFFICE

--WHEN DOING ANY

--ACT OR SERVICE

THAT IS

--REQUIRED OR AUTHORIZED

BY

**--STATUTE, REG, SUPERIOR ORDER, CUSTOM
OR USAGE.**

KEY DIFFERENCES

--OFFICERS = NO "EXECUTION OF DUTY"

REQUIREMENT

= NO "SIGHT OR HEARING"

REQUIREMENT

= STILL, A MUST KNOW V'S STATUS

HYPOTHETICALS

--A SAYS "HI, SWEETHEART" TO FEMALE SUPERIOR

--DISRESPECT?

**--A CALLED INTO CDR'S OFFICE FOR FIGHTING WITH
A SAYS "I'M GOING TO GET THAT *%@###!" ON THE
WAY OUT OF THE OFFICE.**

--DISRESPECT?

**--OFF DUTY NCO BREAKS UP A FIGHT BETWEEN OFF
DUTY SOLDIERS OFF POST?**

--IN THE EXECUTION OF HIS OFFICE?

DISOBEDIENCE

--OFFICERS: WILLFUL, ART 90

--A RECEIVED LAWFUL CMD FROM COMM OF

--OFFICER = SUPERIOR TO A

--A KNEW V WAS SUPERIOR

--A WILLFULLY DISOBEYED.

--DISOBEDIENCE THROUGH NEGLIGENCE: ART 92.

LAWFUL ORDER

--AN ORDER REQUIRING THE PERFORMANCE OF

--A MILITARY DUTY

**OR --AN ACT THAT MAY BE INFERRED TO BE
LEGAL.**

KEY = ORDER MUST RELATE TO MILITARY DUTY

FORM OF ORDER

--FORM DOESN'T MATTER

--MUST DIRECT

--CAN'T BE TOO VAGUE/INDEFINITE

DISOBEDIENCE

--WARRANT, NCO, PO: WILLFUL, ART 91

--A WAS WO OR EM

**--A RECEIVED LAWFUL CMD FROM
WARRANT/NCO/PO**

--A KNEW V WAS WARRANT/NCO/PO

--A HAD A DUTY TO OBEY

--A WILLFULLY DISOBEYED.

--DISOBEDIENCE THROUGH NEGLIGENCE: ART 92.

NONCOMMISSIONED **OFFICER**

**--ENLISTED APPOINTED IN PAY GRADE
E-4 OR HIGHER, EXCLUDING SPECIALISTS**

LOSING STATUS

--NCO SUPERVISOR CALLS ACCUSED (AIRMAN CHEEKS) "AIRMAN SHITS."

--DIVESTITURE?

--ACCUSED MARINE SAYS "I WANT TO SEE THE USMC ON ITS BACK." CDR SAYS "I REPRESENT THE CORPS. LET'S SEE YOU PUT ME ON MY BACK."

--DIVESTITURE?

--ASSAULT?

HYPOTHETICALS

--"PLEASE DELIVER THIS STATUS REPORT TO THE UNIT COMMANDER."

--ORDER?

--"SETTLE DOWN AND BE QUIET?"

--ORDER?

**--MP TELLS OFFICER STOPPED FOR SPEEDING
"SIR, PLEASE REMAIN IN YOUR CAR."**

--ORDER?

--ENFORCEABLE?

DISOBEDIENCE

ART 92

--LAWFUL GENERAL ORDER:

--LAWFUL GO OR REG IN EFFECT

--A HAD A DUTY TO OBEY

--A VIOLATED/FAILED TO OBEY

DISOBEDIENCE

ART 92 CONTD

--OTHER ORDER/REG:

--ORDER ISSUED

--A KNEW ABOUT IT

--A HAD A DUTY TO OBEY

--A DID NOT OBEY

DISOBEDIENCE

ART 92 CONTD

--DISOBEDIENCE THROUGH NEGLIGENCE: ART 92.

AKA: DERELICTION OF DUTY

ASSAULTS AND STATUS

ART 90 (OFFICER V):

PEACETIME: DD, TOTAL FORF, 10 YRS

WARTIME: DEATH

ART 91 (WARRANT/NCO/PO V):

WARRANT: DD, TOTAL, 5 YRS

SUPERIOR NCO/PO: DD, TOTAL, 3 YRS

OTHER NCO/PO: DD, TOTAL, 1 YR

RESPECT AND STATUS

ART 90 (OFFICER V):

BCD, TOTAL FORF, 1 YR

ART 91 (WARRANT/NCO/PO V):

WARRANT: BCD, TOTAL, 9 MOS

SUPERIOR NCO/PO: BCD, TOTAL, 6 MOS

OTHER NCO/PO: 2/3 X3 FORF, 3 MOS

DISOBEDIENCE AND STATUS

ART 90 (OFFICER V):

PEACETIME: DD, TOTAL FORF, 5 YRS

WARTIME: DEATH

ART 91 (WARRANT/NCO/PO V):

WARRANT: DD, TOTAL, 2 YRS

NCO/PO: DD, TOTAL, 1 YR

STATUS: LAW ENFORCE- MENT PERSONNEL

--AUTHORITY: 18 U.S. CODE SECS. 111 & 1114, 28 C

**--WHO: FEDERAL LAW ENFORCEMENT, INCLUDING
MILITARY POLICE AND INVESTIGATORS**

**--WHEN: “WHILE ENGAGED IN OR ON ACCOUNT OF
THE PERFORMANCE OF OFFICIAL DUTIES.”**

--WHERE: CONUS AND OCONUS.

**--FROM WHAT: KILLING, ATTEMPTED KILLING, KID-
NAPPING, ASSLT, INTIMIDATION, INTERFERENCE**

CONDUCT UNBECOMING AN

OFFICER

ART 133

--A DID OR OMMITTED CERTAIN ACTS

**--ACTS WERE UNBECOMING UNDER THE
CIRCUMSTANCES**

INTENT VS. MOTIVE

CRIMINAL MOTIVE = REASON WHY.

= AN “EXPLANATION.”

= NEVER AN ELEMENT

**CRIMINAL INTENT = STATE OF MIND REQUIRED
BY LAW.**

EXAMPLE: U.S. V. HUET-VAUGHN.

CRIMES AGAINST PERSONS

--ASSAULT (ARTICLE 128)

--MURDER (ARTICLE 118)

--MANSLAUGHTER (ARTICLE 119)

--NEGLIGENT HOMICIDE (ARTICLE 134)

ASSAULT

ARTICLE 128

--SIMPLE ASSAULT:

--A ATTEMPTED OR OFFERED TO DO BODILY HARM TO A CERTAIN PERSON.

--THE ATTEMPT OR OFFER WAS DONE WITH UNLAWFUL FORCE OR VIOLENCE.

ASSAULT

ARTICLE 128 CONT'D

--OFFER: UNLAWFUL DEMONSTRATION OF VIOLENCE EITHER BY AN INTENTIONAL OR CULPABLY NEGLIGENT ACTOR OMISSION, WHICH CREATES IN THE MIND OF ANOTHER A REASONABLE FEAR OF BODILY HARM

--SPECIFIC INTENT TO INFLICT BODILY HARM IS REQUIRED.

--CRIMINALITY MEASURED FROM VICTIM'S PERSPECTIVE.

ASSAULT

ARTICLE 128 CONT'D

--ATTEMPT: REQUIRES SPECIFIC INTENT TO INFLICT BODILY HARM.

--WHETHER THE VICTIM KNEW OF THE ATTEMPT OR NOT

--CRIMINALITY MEASURED FROM ACCUSED'S PERSPECTIVE.

ASSAULT

ARTICLE 128 CONT'D

--NO ASSAULT:

--MERE PREPARATION--NO OVERT ACT.

--THREATENING WORDS ALONE.

--CIRCUMSTANCES NEGATE INTENT.

--"IF YOU WEREN'T AN OLD MAN . . ."

**--"IF YOU DON'T HAND OVER YOUR
WATCH . . ."**

ASSAULT

ARTICLE 128 CONT'D

--ASSAULT CONSUMATED BY A BATTERY:

--A DID BODILY HARM TO A CERTAIN PERSON

**--BODILY HARM DONE W/ UNLAWFUL
FORCE OR VIOLENCE.**

--EXAMPLES:

--A STRIKES HORSE V IS RIDING.

--A CUTS CLOTHING WORN BY B.

--A SPITS ON B.

--A PUSHES C INTO B.

--A FORCES KISS ON B.

--A PUNCHES OR SLAPS B WITH HAND/FIST

ASSAULT

ARTICLE 128 CONT'D

--NOT BATTERY:

**--BODILY HARM INFLICTED UNINTENTIONAL
AND WITHOUT CULPABLE NEGLIGENCE.**

--TOUCHING TO ATTRACT ATTENTION.

--TOUCHING TO PREVENT INJURY.

ASSAULT

ARTICLE 128 CONT'D

--STATUS MIGHT MATTER:

--COMMISSIONED, WARRANT, NCO, PO*

**--SENTINEL/LOOKOUT/LAW ENFORCEMENT
IN EXECUTION OF DUTY***

**--ASSAULT CONSUMATED BY BATTERY
ON CHILD UNDER 16**

*** KNOWLEDGE OF V'S STATUS REQUIRED.
SEE ALSO ARTICLES 90, 91, 134**

ASSAULT

ARTICLE 128 CONT'D

**--AGGRAVATED: DANGEROUS WEAPON OR OTHER
MEANS OR FORCE LIKELY:**

**--A ATTEMPTED/OFFERED/DID BODILY
HARM TO CERTAIN PERSON**

--A DID SO W/ CERTAIN WPN/ MEANS/FOR

--A USED UNLAWFUL FORCE OR VIOLENCE

**--WPN/MEANS/FORCE LIKELY TO CAUSE
DEATH OR GBH**

NOTE: USE OF LOADED FIREARM AGGRAVATES

ASSAULT

ARTICLE 128 CONT'D

--AGGRAVATED: GBH INTENTIONALLY INFLICTED

--A ASSAULTED CERTAIN PERSON

--GBH WAS INFLICTED

--A USED UNLAWFUL FORCE OR VIOLENCE

--A HAD SPECIFIC INTENT TO INFLICT GBH

NOTE: USE OF LOADED FIREARM AGGRAVATES

ASSAULT

ARTICLE 128 CONT'D

--GRIEVOUS BODILY HARM = SERIOUS BODILY INJURY

--MORE THAN BLOODY NOSE, BLACK EYE

--INCLUDES:

--FRACTURED/ DISLOCATED BONES

--DEEP CUTS

--TORN MEMBERS OF THE BODY

--SERIOUS DAMAGE TO INTERNAL ORGANS

ASSAULT

ARTICLE 128 CONT'D

**--DANGEROUS WEAPON: WHEN USED IN MANNER
LIKELY TO PRODUCE DEATH/GBH**

--UNLOADED PISTOL = NOT

--MEANS LIKELY TO PRODUCE DEATH/GBH: CAN

--UNLOADED PISTOL USED AS CLUB

--BUNK ADAPTER

--POOL CUE

--HIV

POTENTIAL DEFENSES

**--A MAY ADMIT ACT, BUT DENIES ALL /PART
OF CRIMINAL RESPONSIBILITY**

--SELF DEFENSE

--DEFENSE OF ANOTHER

--INTOXICATION

--PARENTAL DISCIPLINE

--INSANITY

--ACCIDENT

POTENTIAL DEFENSES CONT'

--SELF DEFENSE: MAY ALLOW A TO USE FORCE TO REPEL AN UNLAWFUL ATTACK UPON HIMSELF.

--AUTHORITY TO USE FORCE ENDS WHEN ATTACK REPELLED.

--DEADLY FORCE = AUTHORIZED IN RESPONSE TO THREAT OF DEATH/GBH.

--NON-DEADLY FORCE = USABLE IN RESPONSE TO THREAT OF BODILY HARM.

POTENTIAL DEFENSES CONT'

**--SELF DEFENSE: EVALUATING THE BELIEF
OF THE ACCUSED:**

--SUBJECTIVE TEST: HONEST

--OBJECTIVE TEST: REASONABLE

POTENTIAL DEFENSES CONT'

--SELF DEFENSE:

--RETREAT: NOT A DUTY.

**--ABILITY TO RETREAT MAY BE
CONSIDERED WHEN EVALUATING
A'S REASONABLENESS.**

EXCEPT:

--DEFENSE OF DWELLING

--POLICE SELF DEFENSE

POTENTIAL DEFENSES CONT'

--DEFENSE OF ANOTHER:

**--"RESCUER" STEPS INTO THE SHOES
OF THE PERSON DEFENDED.**

--NO GREATER RIGHT TO USE FORCE.

**--MAY BE LIABLE FOR ASSAULT/OTHER
CRIME IF RESCUEE IS AGGRESSOR**

POTENTIAL DEFENSES CONT'

--INTOXICATION:

**--VOLUNTARY = DOES NOT EXCUSE CRIMINAL
BEHAVIOR**

--MIGHT NEGATE SPECIFIC INTENT.

--INVOLUNTARY = MAY EXCUSE CRIMINALITY

POTENTIAL DEFENSES CONT'

--PARENTAL DISCIPLINE: FORCE JUSTIFIED IF:

**--USED TO SAFEGUARD/PROMOTE WELFARE
OF MINOR CHILD**

**--NOT DESIGNED TO CAUSE OR KNOWN TO
CREATE SUBSTANTIAL RISK OF DEATH
SERIOUS BODILY INJURY, DISFIGURE-
MENT, EXTREME PAIN, OR MENTAL
DISTRESS**

POTENTIAL DEFENSES CONT'

--INSANITY: MAY EXCUSE CRIMINAL CONDUCT IF

**--A UNABLE TO APPRECIATE THE NATURE AND
QUALITY OR WRONGFULNESS OF ACTS**

**--AS A RESULT OF A SEVERE MENTAL DISEASE
OR DEFECT.**

**--BURDEN: ON THE DEFENSE BY CLEAR/CONVINCING
EVIDENCE**

STATUS OF U.S. FORCES OPERATING IN HOST COUNTRY

- **UNDER THE RULES OF CUSTOMARY
INTERNATIONAL LAW**
- **UNDER EMERGENCY WAR TIME
AGREEMENTS**
- **UNDER MAAG-MISSION AGREEMENTS**
- **UNDER STATUS OF FORCES
AGREEMENT**

NATO JURISDICTION FORMULA

EXCLUSIVE JURISDICTION

CONCURRENT

JURISDICTION

1. SENDING STATE HAS PRIMARY RIGHT OVER
OFFENSES COMMITTED BY MEMBERS OF ITS
ARMED FORCES

A. SOLELY AGAINST THE PERSON OR
PROPERTY
OR SECURITY OF THE SENDING STATE
B. SOLELY AGAINST THE PERSON OR
PROPERTY

OF ANOTHER MEMBER OF THE FORCE OR
CIVILIAN COMPONENT OR OF A DEPENDENT
C. ARISING OUT OF ANY ACT OR OMISSION
DONE IN THE PERFORMANCE OF OFFICIAL
DUTY

2. RECEIVING STATE HAS PRIMARY RIGHT OVER
ALL OTHER OFFENSES

ALL OTHER
OFFENSES

SENDING STATE

OFFENSES AGAINST
SENDING STATE LAW
INCLUDING SECURITY
OFFENSES, WHICH
DO NOT VIOLATE
THE LAW OF THE
RECEIVING STATE

RECEIVING STATE

OFFENSES AGAINST
RECEIVING STATE
LAW, INCLUDING
SECURITY
OFFENSES,
WHICH DO NOT
VIOLATE LAW OF
SENDING STATE

PAYMENT OF TRIAL EXPENSES

FILE 10, US CODE, SECTION 1037 AUTHORIZE

COUNSEL FEES

COURT COSTS

BAIL

COPYING/PRINTING

COSTS

FILING FEES

INTERPRETER

WITNESS FEES

OTHER NECESSARY

FINES/DAMAGES CANNOT BE PAID

DISCIPLINE OF CIVILIANS OVERSEAS

- **DEPENDENT ADVISORY COUNCIL**
- **ADMINISTRATIVE SANCTIONS**
- **EARLY RETURN OF DEPENDENTS**
- **NO US COURTS FOR CIVILIANS
ABROAD**
- **FEW US LAWS ARE EXTRA-
TERRITORIAL**
- **PROSECUTION BY LOCAL COURTS**

PERSONA NON GRATA